



Kansas Corporation Commission

FCC MAIL ROOM

DEC 19 1996

RECEIVED

Bill Graves, Governor Timothy E. McKee, Chair Susan M. Seltsam, Commissioner John Wine, Commissioner
Judith McConnell, Executive Director David J. Heinemann, General Counsel

Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington D.C. 20554

DOCKET FILE COPY ORIGINAL

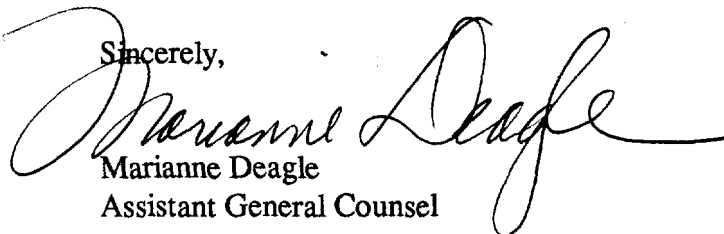
December 16, 1996

Re: CC Docket No. 96-45

Dear Sir or Madam:

Attached is an original and four copies of comments submitted by the Kansas Corporation Commission in response to the Public Notice issued November 18, 1996 in CC Docket No. 96-45.

Sincerely,


Marianne Deagle
Assistant General Counsel

cc: International Transcription Service
Service List

No. of Copies rec'd 019
List ABCDE

Comments Filed on Behalf of the Kansas Corporation Commission

Universal Service; CC Docket 96-45

FCC MAIL ROOM

December 16, 1996

DEC 19 1996

RECEIVED

The Kansas Corporation Commission files these comments in cooperation with the Kansas State Board of Education.

Topic 2 Low Income

What baseline amount of support should be provided to low-income consumers? Is the \$5.25 baseline amount suggested in the Recommended Decision likely to be adequate?

Kansas is listed in the recommended decision as one of the states which does not currently participate in the Lifeline program. However, in a recent open meeting the Kansas Corporation Commission (KCC) orally adopted a state universal service fund which would provide for participation in the federal Lifeline program. A final order outlining the Commission's decision is pending. This decision is consistent with recent state legislation requiring implementation of a state universal service support mechanism and initiating a Kansas lifeline service program. This legislation recognizes the responsibility Kansas has toward the achievement of universal service within the state. The KCC believes that states share in the responsibility with the federal government to ensure affordable telecommunications service. The provision of universal service is not solely a federal or a state obligation, but rather a joint responsibility, which should be

supported by a combination of federal and state support mechanisms.

The KCC agrees with the Joint Board that it should be reluctant to require states to provide support for universal service mechanisms (§ 417). The KCC is concerned that such an FCC imposed requirement may raise jurisdictional questions and spawn litigation.

The Joint Board recommended decision stated its concern over whether a \$5.25 baseline federal contribution is sufficient. The KCC believes that this level of federal support, coupled with a conditional federal contribution of an additional \$1.75 represents a sufficient level of federal support towards universal service. With the addition of Kansas' participation in the Lifeline program, 84% of states have such a plan. The KCC believes, given this level of state commitment to universal service, states will continue to provide state support to secure the maximum level of federal universal service funds. This type of joint state/federal contribution scheme reflects the shared responsibility toward universal service, while at the same time recognizing states' rights in determining the proper level and method of support.

Under the Joint Board's proposed decision, the maximum state/federal contribution towards universal service would be \$10.50 (\$7 federal and \$3.50 state matching). To the extent that any state believes this is insufficient to achieve an appropriate level of low income subscribership in its state, additional state contributions would be necessary. The KCC believes that the Commission should strike a balance between limiting subsidies to the greatest extent possible, with achieving the specific policy goal of providing affordable universal service. The KCC believes the joint board's recommendation strikes this balance. Therefore, federal support is

unnecessary at this time.

How can the FCC avoid the unintended consequence that the increased federal support amount has no direct effect on Lifeline subscribers' rates in many populous states with Lifeline programs, and instead results only in a larger percentage of total support being generated from federal sources?

The increase in federal support from existing levels, under the benchmark proposal, poses a question to those states with existing Lifeline programs. First, the states could reduce their support of Lifeline service, to the extent of the incremental federal contribution, or it could maintain existing levels of state support, resulting in an overall increase in universal service support funding. The latter option would provide low income subscribers with additional opportunities to obtain basic service.

An alternative, which addresses the joint board's concern that increased federal funding may not have a positive impact upon subscribership levels, would be to condition 100% of federal funding of universal service upon state participation in Lifeline. In other words, for every \$1 of state funding, the federal support would be established at \$2, not to exceed a maximum federal contribution of \$7. This would further strengthen the incentive of states to participate in the program, while ensuring that universal service is not disproportionately funded by the federal jurisdiction. This suggestion is consistent with the KCC's opinion that universal service is the joint obligation of both the federal and state jurisdictions.

As mentioned earlier, the KCC agrees with the Commission that it shouldn't mandate state contributions to universal service. Increasing the federal match (moving to a 2 for 1 match, from the existing 1 to 1 match) provides further incentives for the states to participate in the program, a desired goal enunciated by the joint board (§ 418), while at the same time recognizing state jurisdiction over intrastate rates and/or assessments. Since federal funds would continue to be contingent upon state contributions, the Commission would be assured that the larger federal contributions would result in "true" increases in universal service support funding.

The KCC urges the Commission to analyze the correlation between low income subscribership levels in those states adopting a lifeline program with those in non-lifeline states. This analysis would prove helpful in assessing the need to move to a minimum federal contribution benchmark, away from the current matching type mechanism.

Topic 3 Schools/Libraries.

What methods should the Commission use for identifying high cost areas for purposes of providing a greater discount to schools and libraries located in high cost areas? What measures of economic advantage may be readily available to identify economically disadvantaged non-public schools and economically disadvantaged libraries or, if none is readily available, what information could be required that would be minimally burdensome?

The number of students receiving free and reduced meals can be used to determine which schools

are economically disadvantaged. This information is readily available and represents an equitable method in which to determine economically disadvantaged schools.

Topic 5 Administration

Should contributions for high cost and low-income support mechanisms be based on the intrastate and interstate revenues of carriers that provide interstate telecommunications services, based upon the factors enumerated in the Recommended Decision? Should the intrastate nature of the services supported by the high cost and low-income programs have a bearing on the revenue base for assessing funds? Should contributing carriers' abilities to identify separately intrastate and interstate revenues in an evolving telecommunications market and carriers' incentives to shift revenues between jurisdictions to avoid contributions have a bearing on this question?

The KCC acknowledges the joint responsibility and need for cooperation between the federal and state jurisdictions to ensure affordable telecommunications services. The KCC believes, absent existing state support mechanisms, that a single, joint intra/inter state assessment is a logical and equitable way to provide the necessary support for the high cost mechanism.

However, it questions the FCC's legal authority to impose assessments on intrastate revenues and believes the Commission should carefully consider this legal issue prior to issuing its final decision.

The KCC opposes the concept of intrastate assessment for both the low income and high cost assessment portions of universal service. As mentioned earlier, the KCC has adopted a state universal service fund, which results in assessments on intrastate retail revenues to support both Lifeline assistance and provides high cost assistance.

The imposition of an assessment which includes intrastate revenues by the FCC would result in a “double assessment” of intrastate revenues. The contemplated level of low income support is not sufficient to warrant the elimination of the state program, which is currently mandated by state law. Therefore, intrastate retail Kansas telecommunications revenues will be assessed regardless of the funding basis adopted by the FCC. Further, the recommended decision indicates its preference for state participation in low income assistance support. Contrary to this stated goal, states would lack the incentive to participate in low income support mechanisms if the federal portion of contributions were financed by assessments applied to intrastate revenues, given the lack of authority for states to impose assessments on interstate revenues discussed below.

Another important consideration in determining the appropriate contribution base for universal service funding is whether states have the authority to assess interstate revenues. The KCC believes that it has no legal authority to impose such an assessment on interstate revenues. Thus, intrastate revenues would be “double assessed” as mentioned above; once for the Kansas state universal service fund mechanism and again for the federal contribution towards universal service. The Commission believes that such an unbalanced assessment of intrastate revenues would result in intrastate services subsidizing interstate services, a less than desirable result.

The Act clearly distinguishes between the FCC's role in assessing on an interstate basis and the states' role in assessing on an intrastate basis. The plain language indicates the FCC possesses authority to assess interstate revenues, while the state commissions have authority to assess intrastate revenues. There is no explicit indication that the FCC may assess intrastate telecommunications revenues. By differentiating between the FCC's authority to assess interstate and the states' ability to assess intrastate funds, Congress appears to have intended the Telecommunications Act of 1996 to preserve state authority over universal service matters within the state. The Pennsylvania and New York commissions argue that basing federal contributions on intrastate revenues would be unlawful because the 1996 Act does not give the commission the authority to do so. New York alleges that section 254(d) when read in conjunction with Sections 2(b), 254(f) and 601(c), is limited to interstate revenues.

Section 2(b) states that "...nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service." Section 601© states that the 1996 Act "shall not be construed to modify, impair, or supersede Federal, State or local law unless expressly so provided." NYNEX also argues that including intrastate revenues in federal support programs would adversely affect state support programs by assessing contributions on intrastate revenues twice, once for federal support and once for state support. In light of the above, it appears that a recommendation which assesses interstate carriers' intrastate revenues is beyond the scope of the FCC's jurisdiction.

The Joint Board, however, argues that the 1996 Act reflects a continued partnership among the

states and the FCC in preserving and advancing universal service. The Board argues that together, sections 254(d) and 254(f) contemplate continued complementary state and federal programs for advancing universal service.

With regard to the second issue if the Joint Board uses the term “ability” as being synonymous with “authority”, we do not believe the states have the authority to assess interstate revenues of intrastate telecommunications providers. No provision in the Act gives states such authority and we believe that the commerce clause precludes a state from do so in the absence of such authority.